

1 THE HONORABLE THOMAS S. ZILLY  
2  
3  
4  
5  
6

7 **UNITED STATES DISTRICT COURT**  
8 **WESTERN DISTRICT OF WASHINGTON**  
9 **AT SEATTLE**

10 LVB-OGDEN MARKETING LLC,

11 Plaintiff,

12 v.

13 SHARON G. BINGHAM,

14 Defendant,

15 BANK OF THE WEST,

16 Garnishee.  
17

18 No. 2:18-cv-00786-TSZ

19 ***EX PARTE MOTION TO STRIKE***  
20 ***DEFENDANT'S UNTIMELY CLAIM***  
21 ***FOR EXEMPTION***

22 NOTE ON MOTION CALENDAR:  
23 December 7, 2018 (Same Day Motion)

1 Plaintiff LVB-Ogden Marketing LLC (“LVB”) unfortunately has no choice but to bring  
 2 this motion, as Defendant Sharon Bingham—nearly ***seven months too late***—has now served an  
 3 exemption claim asserting that all the Fisher Trust accounts at issue in this proceeding should be  
 4 treated as exempt from garnishment. *See* Ex. A. Defendant is belatedly attempting to trigger a  
 5 statute requiring LVB to ask the Court for a hearing within 14 days, forcing LVB to file this  
 6 motion. *See* RCW 6.27.160(2). But the very statute cited in her claim—and quoted in ***capital***  
 7 ***letters in the claim she served***—makes clear that any exemption claim must be filed “not later  
 8 than ***twenty-eight days after the date stated on the writ.***” RCW 6.27.160(1); Ex. A. As the  
 9 parties have already addressed in controversion briefing in May 2018, and again in summary  
 10 judgment briefing in September 2018, she did not. ECF 6 at 7-8; ECF 32 at 8.

11 Indeed, the writ papers were issued on **April 10, 2018** and served on the Bank and  
 12 Defendant on April 12, 2018. ECF 2, 3, 5 ¶ 3. The Bank answered on **May 7, 2018**. ECF 4.  
 13 Defendant’s claim for exemption was due twenty-eight (28) days after the writ was issued, on  
 14 **May 8, 2018**, but Defendant served no response at all on that date, and certainly claimed no  
 15 exemption on that date. RCW 6.27.160(1); ECF 6 at 5-8; ECF 32 at 8. Defendant therefore  
 16 failed to timely claim any exemption, and has waived any exemption claim that could have been  
 17 made. RCW 6.27.160(1). Nothing in the statute, or Washington law, permits a defendant to  
 18 belatedly make this claim. *U.S. Fidelity & Guar. Co. v. Hollenshead*, 51 Wash. 326, 328 (1909)  
 19 (“The right to claim property . . . specifically exempted by statute is a privilege, and will be  
 20 waived unless asserted at the time and in the manner expressly or impliedly required by the  
 21 law.”).<sup>1</sup> Accordingly, the Court can and should simply strike the claim as untimely.

22 Out of an abundance of caution, LVB has served an objection to the exemption claim  
 23 (attached as Exhibit B), noting that the claim is untimely and defective, and reiterating again the  
 24 points the Court already addressed in granting summary judgment. *See* ECF 40 at 7. Defendant’s  
 25

26 <sup>1</sup> In addition, there is no evidence that Defendant actually filed the “claim” with the Court as required by statute.  
 RCW 6.27.160(1). It is therefore defective on that ground as well.

1 claim is little more than a thinly veiled attempt to reargue the Court's summary judgment order,  
2 and burden the Court again with the same arguments that have already been presented and  
3 disposed of. The Court should simply strike it as untimely. If the Court is not inclined to simply  
4 strike the pleading as untimely in response to this motion, LVB would ask that the untimeliness of  
5 Defendant's claim be addressed on an expedited briefing schedule. Likewise, if the Court  
6 believes a hearing under RCW 6.27.160(2) is necessary, LVB would ask that any hearing be  
7 limited to the untimeliness of Defendant's claim. LVB files this motion only out of an abundance  
8 of caution, to comply with the statute Defendant is attempting to belatedly invoke.

9 DATED: December 7, 2018

10 s/ William R. Squires III

11 William R. Squires III, WSBA No. 4976  
12 CORR CRONIN LLP  
13 1001 Fourth Avenue, Suite 3900  
14 Seattle, Washington 98154-1051  
15 Telephone: (206) 625-8600 Fax: (206) 625-0900  
16 E-mail: rsquires@corrcronin.com

17 *Attorneys for Plaintiff*

CERTIFICATE OF SERVICE

I hereby certify that on December 7, 2018, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, and I hereby certify that I have mailed by United States Postal Service first-class mail the document to the following non CM/ECF participants:

**Nathan J Arnold**  
JOHNSTON JACOBOWITZ & ARNOLD, PC  
2701 First Ave., Suite 340  
Seattle, WA 98121  
Telephone: (206) 866-3230  
Email: [nathan@jjlaw.com](mailto:nathan@jjlaw.com)

*Attorney for Defendant Sharon Bingham*

**David Ryan Ebel**  
**M. John Way**  
SCHWABE WILLIAMSON & WYATT  
1420 5th Ave., Suite 3400  
Seattle, WA 98101-4010  
Telephone: (206) 407-1525  
Email: [debel@schwabe.com](mailto:debel@schwabe.com)  
Email: [mjway@schwabe.com](mailto:mjway@schwabe.com)

**Eleanor A DuBay**  
TOMASI SALYER MARTIN  
121 SW Morrison St., Suite 1850  
Portland, OR 97204  
Telephone: (503) 894-9900  
Email: [edubay@tomasilegal.com](mailto:edubay@tomasilegal.com)

*Attorneys for Defendant Bank of the West*

s/ William R. Squires III

William R. Squires III, WSBA No. 4976  
Attorney for Plaintiff  
CORR CRONIN LLP  
1001 Fourth Avenue, Suite 3900  
Seattle, Washington 98154-1051  
Telephone: (206) 625-8600  
Fax: (206) 625-0900  
e-mail: rsquires@corrchronin.com